

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 176741

PRELIMINARY RECITALS

Pursuant to a petition filed on September 13, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care (CC), a hearing was held on October 18, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$1,156 for the period of September 13, 2015 – November 21, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On June 19, 2015, the Petitioner submitted a renewal for child care benefits. Petitioner reported a household size of four including herself, a 20 year old child, a 14 year old child and a 7 year old child. She reported employment at [REDACTED] with an hourly rate of \$15.23.
3. On July 2, 2015, the agency issued a Notice of Eligibility Child Care to the Petitioner informing her that she was eligible for child care beginning August 1, 2015 for her 7 year old child.
4. On September 17, 2015, the Petitioner called for child care authorization. The agency used information from an employment screen indicating that the Petitioner works at [REDACTED] 40 hours/week. She requested child care benefits for before and after school care for her 7 year old child.
5. On September 21, 2015, the agency issued a Child Care Authorization Information notice to the Petitioner informing her that she was approved for an enrollment based authorization for her 7 year old child for 48 hours/week beginning September 6, 2015. The notice states: "This child has been identified as a school-age child. This means that extra hours of child care can be paid when the school is closed for holidays, bad weather, or other unexpected reasons and the child attends child care. . ." The notice was also sent to the Petitioner's child care provider. Though the child was identified as a school-aged child, she was coded in the agency system as a non-school-aged child, resulting in the issuance of excess child care benefits to the provider.
6. The agency issued payments of \$118/week to the Petitioner's child care provider for the weeks of September 13, 2015, September 20, 2015 and September 27, 2015. The agency issued payments of \$170/week to the Petitioner's child care provider during the period of October 4, 2015 – November 15, 2015.
7. On September 2 and 6, 2016, the agency issued Child Care Client Overpayment Notices and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$1,156 for the period of September 13, 2015 – November 30, 2015 due to agency error in determining eligibility.
8. On September 13, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Adm. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Adm. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat. § 49.155(1m)(a); W-2 Manual, §15.2.0.

Additional pertinent regulations governing Wisconsin Shares overpayments are found in DCF 201.04(5) which states as follows:

(5) Overpayment recovery and penalties.

(a) Parent overpayments.

1. A child care administrative agency or the department shall take all reasonable steps necessary to recover from a parent funds paid to a child care provider or to that parent when the parent was not eligible for that level of child care benefit ***and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under child care assistance program requirements, regardless of whether the overpayment was the result of administrative error,*** client error, or intentional program violation. Section DCF 101.23 shall apply to overpayment collection from a parent under this section.

...

(b) Provider overpayments. A child care administrative agency or the department shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible ***or overpayments caused by administrative error that benefited the provider.*** A provider shall be responsible for an overpayment if any of the following conditions are met:

...

5. A provider benefited by receiving more child care reimbursement than otherwise would have been paid on the family's behalf under child care assistance program requirements, the parent is not responsible for the overpayment under par. (a), and the reimbursement did not benefit the parent by causing the parent to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements.

The agency concedes that the error resulting in this overpayment was an agency error. Specifically, the agency coded the Petitioner's school-aged child as a non-school-aged child which resulted in benefits being issued as if the child was in full-time child care. Petitioner had requested only before and after school care which should have resulted in the issuance of an authorization for 10 hours/week for a school-aged child. Because the authorization was enrollment-based, the provider received reimbursement for 48 hours/week even though the Petitioner's child was only attending 8 hours/week.

The agency has not met its burden of demonstrating that it properly seeks to recover the overpayment that resulted from its error from the Petitioner. The agency must demonstrate that the overpayment benefited the Petitioner by causing her to pay less for child care expenses than she would have otherwise been required to pay. DCF 201.04(5)(b)5 specifically requires the agency to collect an overpayment such as this one from the provider because it was the provider who benefited by receiving more reimbursement for the Petitioner's child than should have been paid and the payment did not benefit the parent. Instead, the provider received reimbursement of 40 hours/week more than it should have for care that was not provided to the Petitioner's child. The Petitioner received no benefit from the agency's overpayment; instead, the provider received a significant benefit as a result of the agency's error and it is the provider that is to be held responsible in this situation, according to DCF 201.04(5)(b).

CONCLUSIONS OF LAW

The agency may not recover an overissuance of child care benefits in the amount of \$1,156 from the Petitioner for the period of September 13, 2015 – November 30,, 2015 due to agency error.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind the overpayment action against the Petitioner for Claim # [REDACTED] and to cease all collection actions against the Petitioner. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

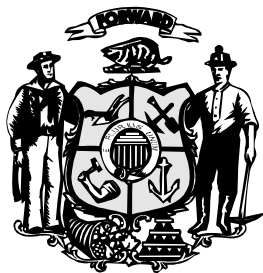
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 3, 2017.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud